

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR

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San Francisco, CA 94102
(415) 703-5050

May 25, 2001

Ms. Xema Jacobsen, Business Manager
San Diego County Building & Construction Trades Council
9455 Ridgehaven Court No. 205
San Diego, CA 92123

Re: Public Works Case No. 2000-082
West Hills Field Renovation Project
City of Santee/Santee Sports Council

Dear Ms. Jacobsen:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above referenced project under California's prevailing wage laws and is made pursuant to Title 8, California Code of Regulations, section 16001(a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the sports field improvements project by the Santee Sports Council is a public works subject to the payment of prevailing wages.

The City of Santee ("City") is a general law city located in San Diego County. The Santee Sports Council is a California non-profit public benefit corporation organized to promote and regulate certain youth sports activities within the overlapping geographical boundaries of City, Grossmont Union High School District, and the Santee Elementary School District. The Sports Council is designed to coordinate the use and preservation of athletic facilities for the mutual benefit of the citizens, athletes, and local government entities.

On May 31, 2000, City made a grant to the Sports Council in the amount of \$350,000. The purpose of this grant was to provide funds to renovate West Hills Field ("Project"), which contains several fields for use by soccer, baseball, and football teams. The Project consists of three phases. Phase 1 involves minor landscaping improvements such as aerating, top dressing, over seeding, and fertilizing. This work was performed by students of Ron Burner, President of the Sports Council, from the landscape construction and maintenance class that he teaches as a member of the faculty of West Hills High School.

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The second and third phases of the project involve improvements to the facility, the addition of a lighted football/soccer field and a lighted baseball/softball field. These phases will involve trenching, installing poles, fixtures, bases, conduit, wires and switchgear. This work will require that the Sports Council hire an electrical engineer and seek approval from the State Architect's Office of any plans drawn up. Phase 1 is apparently complete but Phases 2 and 3 are awaiting an environmental impact report before construction can commence. Once the report is completed and approved, electrical engineering plans will be submitted to the State Architect for final approval.

The questions presented are:

- (1) whether the Project is a public works subject to the payment of prevailing wages;
- (2) if the Project is a public works, whether any of the work is exempt under Labor Code section 1720.4.¹

Section 1720(a) defines public works, in relevant part, as construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds.

Section 1720.4 states:

For the limited purposes of this chapter, "public works" shall not include any otherwise covered work which meets all the following conditions:

- (a) The work is performed entirely by volunteer labor.
- (b) The work involves facilities or structures which are, or will be, used exclusively by, or primarily for or on behalf of, private nonprofit community organizations including, but not limited to, charitable, youth, service, veterans, and sports groups or associations.
- (c) The work will not have an adverse impact on employment.

¹ All further "section" references are to the Labor Code and Department of Industrial Relations regulations.

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(d) The work is approved by the Director of Industrial Relations as meeting the requirements of this section.

For purposes of subdivision (c), the director shall request information on whether or not the work will have an adverse impact on employment from the appropriate local or state organization of duly authorized employee representatives of workers employed on public works.

8 Cal.Code Regs. 16003 states:

(a) An awarding body wishing to use volunteer labor on what would otherwise be a public works project, pursuant to Labor Code Section 1720.4 shall serve a written request for approval on the Director, not less than 45 days prior to the commencement of work on the facilities or structures.

(b) The request for approval shall fully set forth the awarding body's grounds for belief that the requirements of Labor Code Section 1720.4(a), (b), and (c) are satisfied, and shall list all the crafts and classifications of workers that typically perform the types of work needed for the project.

(c) The request for approval shall identify the unions which represent workers in the crafts or classifications listed in (b) within the locality in which the public work is performed.

As noted earlier, the construction is being paid for with grant funds from City to the Sports Council. Grant funds are public funds for purposes of the prevailing wage law. Accordingly, the Project is a public work because it is construction done under contract and paid for from public funds.²

The next issue is whether the Project is exempt from the definition of a public work, pursuant to section 1720.4.

² Precedential Public Works Case No. 99-052, Lewis Center For Earth Sciences (November 12, 1999); California Attorney General's Opinion No. 99-804 (October 23, 2000).

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Under Section 1720.4(a), the work must be performed entirely by volunteer labor. Here, only Phase 1 of the Project may have been performed by the volunteer labor of the landscaping students. As such, the first statutory condition has not been met.

It would appear that the conditions of section (b) are met in that the newly renovated West Hills Field will be used primarily by local non-profit community sports groups and associations.

Whether the condition of section 1720.4 (c) is met is at least arguable because the San Diego Building and Construction Trades Council apparently does not agree that the Project will not have an adverse impact on local employment as evidenced by its filing of a request for a coverage determination.

Finally, the statute and applicable regulations are quite specific in requiring that the Director approve the use of volunteer labor on a project. Under section 16003, the request to the Director for approval to use volunteer labor must be made by an awarding body at least 45 days prior to the commencement of work. Mr. Burner readily concedes that he is unaware of any application having been made to the Director for approval of the use of volunteer labor on the Project. The Director has not approved the use of volunteer labor on the Project.

In sum, the conditions of 1720.4 have not been met and no volunteer labor exemption has or can be granted.

For the foregoing reasons, all of the work involved in the West Hills Field renovation project is a public work subject to the payment of prevailing wages.

Sincerely,



Stephen J. Smith
Director

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